

REMARKS

37 CFR 1.131 DECLARATION

Regarding the Office Action Response to Arguments that the inventor's Japanese patent description submitted as evidence under 37 CFR 1.131 (1.131 Evidence) is insufficient to establish a conception of the invention prior to the effective date of Sobel, the Office Action arguments are traversed in view of MPEP 715.02 guidance, as follows:

The Office Action relies upon MPEP 715.07-III. However, MPEP 715.02 also provides:

The 37 CFR 1.131 affidavit or declaration must establish possession of either the whole invention claimed or something falling within the claims (such as a species of a claimed genus) in the sense that the claim as a whole reads on it.

The Office Action Response to Arguments provides that the 1.131 Evidence does not discuss a determination being made whether the virus definition file for a user apparatus is up to date. First, the language of claim 1 provides "detecting a security level ... based upon ***a record of updating.***" Second, the 1.131 Evidence page 4 expressly provides '***A requirement of a security level according to this example is access to a virus information server within a predetermined interval.***' The 1.131 Evidence language discusses that a security level requirement is to access a virus information server, and it is necessarily present that a security level can be achieved by accessing the virus information server to update the virus definition file. So it is readily apparent that Applicants possession of what is shown in the 1.131 Evidence, namely accessing a virus information server within a predetermined interval, also carries with it possession of a record of updating a virus definition file based upon such accesses to the virus information server within a predetermined interval. In other words, the language of claim 1 "detecting a security level ... based upon ***a record of updating***" reads on the 1.131 Evidence page 4 '***A requirement of a security level according to this example is access to a virus information server within a predetermined interval.***' Therefore, the 1.131 Evidence is sufficient to establish conception of the language of claim 1 prior to Sobel.

In addition, the 1.131 Evidence page 4, last paragraph, expressly describes "A characteristic is that an access record is held by the virus information server ...," and therefore, the language of claim 1 is amended by requiring, "a security detection unit detecting a security level of a user apparatus, ***based upon an access record of the user apparatus accessing a virus information computer*** updating a virus definition file of the user apparatus."

Independent claims 5, 9, 13, 15 and 27 are amended to require limitations similar to the limitations of amended claim 1.

The lack of sufficiency of the 1.131 Evidence is traversed, so the 1.131 Evidence is effective for overcoming Sobel, which is requested.

CLAIM REJECTIONS:

Claims 1-27 had been pending.

Claims 1-27 are rejected under 35 USC 102(e) as being anticipated by Herrmann (US Publication no. 2003/0055994).

Claims 1-27 are rejected under 35 USC 102(e) as being anticipated by Sobel (US Publication no. 2004/0103310).

The claims are amended and cancelled without disclaimer or prejudice, new dependent claim 28 is added, and thus, the pending claims remain for reconsideration, which is requested.

The independent claims are 1, 5, 9, 13, 15 and 27.

Independent claims 1, 5, 9 and 13:

Claim 1 is amended to require a patentably distinguishing of the invention, conception of which is also established by the 1.131 Evidence, that a security level of the terminal 2 is determined from an 'access pattern,' namely, for example, whether a terminal 2 accesses at a predetermined interval the virus information server 5. Amended claim 1 requires "a security detection unit **detecting a security level of a user apparatus, based upon ~~aan~~ access record of the user apparatus accessing a virus information computer** updating a virus definition file of the user apparatus." The US specification page 8, lines 9-16; page 9, lines 13-24; page 12, lines 1-2 and page 17, lines 19-24 expressly support this feature. Further, the 1.131 Evidence page 4 expressly provides 'A requirement of a security level according to this example is access to a virus information server within a predetermined interval.'

Since the sufficiency of the 1.131 Evidence is established for the reasons discussed above, Sobel is not a valid prior art.

Regarding Herrmann, according to MPEP 2131 guidance, to support a prima facie case of anticipation rejection, Herrmann must either expressly or inherently disclose each and every element of claim 1. In view of MPEP 2112, inherency requires a feature to be necessarily present even though not expressly discussed. Herrmann paragraphs 50, 51 and 87 (FIG. 4B)

only discuss verifying the client computer to determine whether client computer is operating a particular anti-virus program and verifying that the program is up to date. However, this does not expressly discuss the language of amended claim 1, namely “a security detection unit detecting a security level of a user apparatus, based upon an access record of the user apparatus accessing a virus information computer updating a virus definition file of the user apparatus,” because Herrmann is silent on checking an access record of a client computer to a virus information computer. Further, there is no evidence that Herrmann necessarily requires this limitation, since Herrmann discusses checking the client computer to determine whether the client computer is using approved and updated anti-virus application. Thus, a prima facie case of anticipation based upon Herrmann cannot be established.

Withdrawal of the rejection of claim 1 and allowance of claim 1 is requested.
Independent claims 5, 9, and 13 are amended to require limitations similar to the discussed limitations of amended claim 1.

New Dependent Claim 28:

In addition, new dependent claim 28 depending from claim 1 is allowable by requiring “wherein the detecting is based upon ***whether the user apparatus accesses the virus information computer at a predetermined interval,***” which at least for the reasons discussed above is not disclosed, either expressly or inherently, by Herrmann and Sobel. Allowance of dependent claim 28 is requested.

The remaining dependent claims inherit the patentable recitations of their respective base claims, and therefore, patentably distinguish over the cited art for the reasons discussed above in addition to the additional features recited therein.

Independent claims 15 and 27:

Since the sufficiency of the 1.131 Evidence is established for the reasons discussed above, Sobel is not a valid prior art.

For the reasons discussed above, Herrmann does not expressly or inherently disclose “determining a security level of a user terminal ... based upon ... an access record of the user terminal accessing a virus information computer.”

Further, Herrmann fails to disclose, either expressly or inherently, the language of claim 15 with respect to detecting a security level of a user terminal based upon a plurality of criteria, namely “***security information updating history*** of the user apparatus terminal, ***port access***

information of the user terminal, [[or]] **programs and/or scripts downloaded and/or executable** at the user terminal, or **responsiveness to a command by the user terminal**." The Office Action relies upon Harrmann paragraphs 50 and 51 to reject these features, but nothing has been cited or found that expressly or inherently (necessarily) discloses these features. For example, Harrmann is silent on "**port access information of the user terminal**" and/or "**responsive to a command by the user terminal**" for determining a security level of the user terminal.

Withdrawal of the rejection of claim 15 and allowance of claim 15 is requested.

Independent claim 27 requires limitations similar to the discussed limitations of amended claim 15. The remaining dependent claims inherit the patentable recitations of their respective base claims, and therefore, patentably distinguish over the cited art for the reasons discussed above in addition to the additional features recited therein.

Withdrawal of the rejections and allowance of the claims is requested.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,
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